



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER Term, 1977

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No. 77-1087

Elias Swanco, Petitioner

v.

Commissioner of Patents, Respondent

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Appendix to

Petition for a Writ of Certiorari to the United States  
Court of Appeals for the District of Columbia Circuit

A handwritten signature in cursive script, appearing to read "Elias Swanco".

Elias Swanco, Pro Se.  
1613 Balhurst Avenue  
Pittsburgh, Pa. 15204

PAGINATION AS IN ORIGINAL COPY

In re application

Elias Ewance

Ser. No. 12 884

Filed 2-2-70

For PRE-SCHOOL LEARNING Before the Board of Appeals

Appeal No. 090 05

Mailed April 21, 1971

GROUP 330

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Examiner's Answer

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This is an appeal from the final rejection wherein the Examiner rejected claims 7-12. By amendment after final rejection applicant has cancelled claims 8-12 and added claim 13. Accordingly the appeal is directed to claims 7 and 13. No claims are allowed.

A correct copy of the appealed claims appears on page 2 of applicant's brief.

THE REFERENCES OF RECORD RELIED ON ARE:

298,991  
1,557,824

Levey  
Fritz

5-1884  
10-1925

THE REJECTION

Claim 7 is rejected under 35 USC 102 as unpatentable over Fritz. Reference is made to page 2 of the Final Rejection (Paper No.3) for the statement of the ground of rejection.

4/19/71

Claim 7 is further rejected under 35 USC 103 as unpatentable over Fritz, taken together with Levey. Reference is made to page 3 of the Final Rejection for the statement of the ground of rejection.

Claim 13, added since the Final Rejection, is rejected under 35 USC 103 as unpatentable over Fritz, taken together with Levey. The ground of rejection of claim 7, as outlined in the preceding paragraph and discussed on page 3 of the Final Rejection, is also applicable to claim 13.

#### RESPONSE TO ALLEGATIONS

In discussing claim 7 applicant narrowly interprets the term "conventional playing cards" as requiring rank and suit markings on the cards. However a claim should be given the broadest reasonable interpretation. As it is, claim 7 is broad enough to be readable on cards which are blank except for the alphabet and number indicia. If applicant intended claim 7 to be limited to cards marked to show their suit and rank this language should have been in the claim, as it is in claim 13.

In referring to Levey applicant gives the impression that the reference only has court or picture cards. Actually Levey can have the usual fifty-two cards or any other number. See lines 56-59 of Levey.

At the bottom of page 10 applicant suggests that, when combining the teachings of Fritz and Levey, confusion would be introduced by placing two different letters on the same picture card. Applicant does not show his picture cards, but it seems that they also have two different letters. For example, his Jack of Spades has a "J" for Jack and a "K" for the eleventh letter in the alphabet, according to the last five lines of page 3 of the substitute specification.

For the reasons set forth above and incorporated by reference from the Final Rejection it is believed that the rejection is proper.

W.H. Grieb: Examiner

GROUP ART UNIT 336

Appeal No. 090-05

MAILED

Hearing:  
April 5, 1972

APR 28 1972

U.S. PATENT OFFICE  
BOARD OF APPEALS

IN THE UNITED STATES PATENT OFFICE

BEFORE THE BOARD OF APPEALS

Ex parte Elias Ewance

Application for Patent filed February 2, 1970,  
Serial No. 12,884 which is a continuation of Serial  
No. 846,079, filed July 30, 1969. Pre-School Learning.

Before Reaming, Parker and Mattern, Examiners-in-Chief.  
Parker, Examiner-in-Chief.

This is an appeal from the final rejection by the  
examiner of two claims, numbered 7 and 13, of appellant's  
application for a patent on a pre-school learning device  
as being unpatentable over the prior art. Both Sections  
102 and 103 of Title 35 U.S.C. are involved.

As depicted in the application drawings, appellant's  
instructional device comprises a deck of playing cards  
which are said to be so modified as to provide an effec-  
tive teaching and learning tool for youngsters. Each  
card contains at least one alphabet letter and a number  
corresponding to the numerical position of that letter  
in the alphabet.

The appealed claims read as follows:

7. An instructional device comprising:

- (1) a deck of conventional playing cards,
- (2) an alphabet letter on each card of said deck,
- (3) a number on each card specifying the numerical position of said letter in the alphabet.

13. An instructional device comprising:

- A. a deck of cards, each card having a face carrying
  - (a) indicia identifying the suit of the card and the rank of the card in said suit;
  - (b) at least one alphabet letter;
  - (c) a number corresponding to the numerical position of said letter in the alphabet.

B. said deck consisting of fifty-two cards, including four suits of 13 cards each, and carrying at least two complete alphabets.

The references relied upon are:

Levey	298,991	May 20, 1884
Fritz	1,557,824	Oct. 20, 1925

The patent to Levey relates to playing cards. It discloses a deck of fifty-two playing cards having cards in each suit which contain the pictures of the court-cards they are intended to represent and spots or suit-pips corresponding in number to the numerical value of the card. For example, one card of each suit has imprinted thereon a picture to represent the knave and also eleven spots or pips, and another card of each suit a picture to represent the queen and also twelve spots or pips, and a third card of each suit a picture to represent the king and also thirteen spots or pips.



The patent to Fritz relates to an educational game. It discloses a deck of fifty-two cards with two alphabet letters on each card and a number on each card specifying a numerical position of the letter in the alphabet. Within the deck of fifty-two cards, there are two cards each bearing a similar letter, i.e., two alphabets of twenty-six cards each (see page 1, lines 39-51).

Claim 7 stands rejected under the provisions of 35 USC 102 as being unpatentable over Fritz. Claim 7 stands further rejected under 35 USC 103 as being unpatentable over Fritz taken in combination with Levey.

In our opinion, the record in this case fully supports the examiner in his rejection of the appealed claims.

From what has been said hereinbefore, it is believed clear that claim 7 is fully anticipated by the disclosure of Fritz (35 USC 102). Fritz, in the language of claim 7, discloses an instructional device (col.1, line 11) which comprises a deck of conventional playing cards (col.1, line 35), an alphabet letter 14 on each card of the deck and a number 13 on each card specifying the numerical position of the letter in the alphabet (col.1, lines 35-55). For the foregoing reason, we find no error in either the examiner's reasoning or his conclusion, both of which have been carefully reviewed in the light of all of appellant's arguments. Accordingly, we will sustain the examiner's rejection of claim 7 under the provisions of 35 USC 102.

In rejecting claims 7 and 13 as being unpatentable over Fritz in view of Levey under the provisions of 35 USC 103, the examiner took the position that since "Fritz and a conventional deck such as Levey's both have 52 cards and since conventional decks are commonly found in homes and are played with by children it would be obvious to one familiar with the disclosure of Fritz that the letters and numbers described by him could be applied to a conventional deck of cards, such as the deck of Levey, to enable the deck to be used for educational purposes as well as for ordinary card games." In view of the detailed disclosure of Fritz set forth hereinbefore, we agree with the examiner. Therefore, we will also sustain the examiner's rejection of claims 8 and 13 under the provisions of 35 USC 103.

We have carefully considered the contentions and arguments presented in appellant's various papers as well as those presented at the hearing but we are of the opinion that the examiner's rejections were proper and they will be sustained.

The decision of the examiner is affirmed.

AFFIRMED

George Roeming  
Examiner-in-Chief

F. Parker  
Examiner-in-Chief

Fred C. Mattern, Jr.  
Examiner-in-Chief

BOARD  
OF  
APPEALS

UNITED STATES DISTRICT COURT  
for the District of Columbia

Filed Dec. 22, 1976  
JAMES F. DAVEY, CLERK

Elias Swanco, Plaintiff,

v.

Civil Action No. 1187-72

Commissioner of Patents  
and Trademarks, Defendant.

MEMORANDUM OPINION AND ORDER

This is an action brought under the provisions of 35 USC 145 seeking an order from the Court directing the Commissioner of Patents and Trademarks to issue letters patent on an application, serial No. 12,884, a continuation of serial No. 846,079 filed July 30, 1969, for an invention characterized as follows:

Claim 7: An instructional device comprising:

- (1) a deck of conventional playing cards,
- (2) an alphabet letter on each card of said deck,
- (3) a number on each card specifying the numerical position of said letter in the alphabet.

Claim 13: An instructional device comprising:

- A. a deck of cards, each card having a face carrying
  - (a) indicia identifying the suit of the card and the rank of the card in said suit;
  - (b) at least one alphabet letter;
  - (c) a number corresponding to the numerical position of said letter in the alphabet.
- B. said deck consisting of fifty-two cards, including four suits of thirteen cards each, and carrying at least two complete alphabets.

Plaintiff, in his application in suit, claims an instructional device for pre-school children combining a deck of cards, the twenty-six letters of the English alphabet, and the Arabic numbers 1 through 26.

The question to be resolved is whether the subject matter of the application is obvious under 35 USC 103 or anticipated in the art under 35 USC 102. References relied upon by the Patent Office in rejecting the claims are:

Levey Serial No. 298,991 May 30, 1884  
Fritz Serial No. 1,557,824 October 20, 1925

Claim 7 was rejected under 35 USC 102 as unpatentable over Fritz and under 35 USC 103 as unpatentable over Fritz taken with Levey. Claim 13 was rejected under 35 USC 103 as unpatentable over Fritz taken with Levey.

Levey discloses a deck of fifty-two ordinary playing cards which has been modified to have the "face" or "honor" cards include the rank of the cards. For example, a jack or knave of hearts would have a picture of a jack, eleven heart spots or pips, and the number eleven on it. A queen would have a picture, twelve heart pips, and the number twelve.

Fritz discloses an educational game with a deck of fifty-two cards, each having an alphabet letter and the corresponding number of the letter's position in the alphabet; e.g., "A" would have a "1", "Z" would have a "26". Since there are fifty-two cards, there are two complete alphabets per deck. What are commonly known as "suits"

to persons familiar with playing cards could be signified by animal figures in the Fritz patent.

Since as far back as Hotchkiss v. Greenwood, 52 U.S. 247 (1850) the test for patentability has been that the invention must be the result of the exercise of ingenuity and skill beyond that possessed by one of ordinary skill in the art. This test is found in the U.S. Code at 35 USC 103. Three basic factual inquiries essential to a determination of obviousness are: scope and content of prior art; difference between prior art and the claims at issue; and level of ordinary skill in the pertinent art. Halliburton Co. v. Dow Chemical Co., 514 F. 2d 377 (10 Cir. 1975); accord, Trico Products Corp. v. Roberk Co., 490 F. 2d 1280 (2Cir. 1973), cert. den. 417 U.S. 33.

Plaintiff claims to have invented a new deck of cards comprised of regular cards, so to speak, to which letters and numbers have been added. Fritz shows letters and their corresponding number rank on the faces of a blank deck of fifty-two cards. Levey shows that numbers which normally do not appear on the face of cards could be added.

Therefore, the Court holds that the claims in issue do not define a patentable invention under 35 USC 103 over the references cited.

This memorandum opinion may serve as finding of fact and conclusions of law and judgement order.

Matthew F. McGuire  
United States District Judge

December 21, 1976

not to be published- see local rule 8 (f)  
UNITED STATES COURT OF APPEALS  
for the District of Columbia Circuit

Bo. 77-1108

September Term, 1977

Elias Ewanco, Appellant

Civil No. 1187-72

v.

United States Court of Appeals  
for the District of Columbia Circuit

Commissioner of Patents

Filed Jan 5, 1978  
George A. Fisher, Clerk

Appeal from the United States District Court for the District of Columbia

Before: Wright, Tamm and Leventhal, Circuit Judges

JUDGEMENT

This cause came on for consideration on the record on appeal from the United States District Court and briefs were filed by the parties. On consideration of the foregoing, it is

ORDERED AND ADJUDGED by this Court that the judgement of the District Court appealed from herein is hereby affirmed, for the reasons set forth in the attached memorandum.

Per Curiam  
for the Court

George A. Fisher  
Clerk

Bills of costs must be filed within 14 days after entry of judgement. The Court looks with disfavor upon motions to file bills of costs out of time.



MEMORANDUM

We have given careful consideration to appellant's submission, particularly because he files pro se. He seeks a patent on Claim 13 for an instructional device, a deck of 52 cards, carrying at least two complete alphabets, with each card having a face carrying (a) indicia of suit and rank of card, (b) at least one alphabet letter, and (c) a number corresponding to the numerical position of said letter(s) in the alphabet. Our review convinces us that the opinion of District Judge McGuire is sound, that there is no basis for overcoming the presumption of correctness of the determination of the Patent Office, that this result is required by the Supreme Court's rulings on obviousness and nonobviousness, see Graham v. John Deere, et al., 383 U.S. 1 (1966) and that the Levy and Fritz references cited by the district court preclude a reversal by this court.

AFFIRMED.